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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,759	01/26/2004	Kazuhiko Ueda	19036/37425A	8775
4743	7590	12/12/2005	EXAMINER	
MARSHALL, GERSTEIN & BORUN LLP 233 S. WACKER DRIVE, SUITE 6300 SEARS TOWER CHICAGO, IL 60606			HENDRICKS, KEITH D	
		ART UNIT	PAPER NUMBER	
		1761		

DATE MAILED: 12/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/764,759	UEDA ET AL.
	Examiner Keith Hendricks	Art Unit 1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 15-34 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) Claim(s) ____ is/are allowed.
- 6) Claim(s) 15-34 is/are rejected.
- 7) Claim(s) ____ is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on ____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: ____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1-26-04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claims 15-34 are currently pending and examined.

Claim Objections

Claims 19 and 32 are objected to because of the following informalities: it is believed that the term “potate” should be “potato”. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 23 recites “etherified starch; etherified starch, and mixtures thereof” (i.e. “etherified starch” appears twice consecutively), and thus does not further limit the invention within the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Art Unit: 1761

- i) Claims 15-17, 22, and 25-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Meer et al. (US PAT 5,073,370, of record).

Meer et al. disclose a powdered fiber laxative comprising psyllium powder, apple fiber, fructose and gum arabic. "Powders with particle sizes as great as a 40 mesh may be used to form an acceptable product" (col. 3). The apple fiber is a source of dietary fiber, and together with psyllium, make up at least 75% by weight of the composition. The weight percentages of apple fiber (polysaccharide), psyllium and gum arabic (another polysaccharide) are provided in Table I. The granulated powder mixture is then added to water to form a liquid composition. Thus, the instantly-claimed invention is anticipated by the reference.

- ii) Claims 15-17, 22 and 25-30 are rejected under 35 U.S.C. 102(e) as being anticipated by Sander (US PAT 6,312,730, of record).

The Sander patent discloses a powdered fiber laxative comprising psyllium powder and gum arabic, where the gum arabic is used to coat the psyllium component. Gum arabic is both a polysaccharide and a natural, soluble fiber (bottom col. 3). Column 4, lines 53-56 state that about 80% of the particles will be retained on a 140 mesh screen. The granulated powder mixture is then added to water to form a liquid composition. Thus, the instantly-claimed invention is anticipated by the reference.

- iii) Claims 15-19, 22-23 and 25-32 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 10-174558 (of record; computer-generated English translation).

JP '558 discloses a composition for use in flour noodles. "This composition contains at least one of psyllium seed gum and calcium salt, together with at least one kind of modified starch" (abstract). This mixture is referred to as a "constituent for noodles", or a type of pre-mix, in powdered form prior to the addition of water for the noodles (see, for example, page 11). The modified starches are produced from numerous sources, including waxy corn starch, potato and tapioca starch (pg. 5, or paragraph 14). Various known methods of starch modification are provided, including etherification, esterification, acetylation of the hydroxyl groups of the starch, etc. (pg. 6, or paragraph 13).

Thus, the claimed invention is anticipated by the reference. Regarding the liquid or aqueous forms of the instant food composition and method claims, once the water is added to the pre-mix, this forms a type of "liquid food", or an "aqueous solution containing psyllium", before additional flour is incorporated to make the noodle.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 20-21, 24 and 33-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over either of Meer et al. or Sander, taken as cited above, each in view of Gonze et al. (US PAT 5,976,582).

Gonze et al. disclose the production of an acid-thinned hydroxypropylated (i.e. etherified) tapioca starch. The modified starch is exemplified as useful in precoating of chewing gum, nuts and other foodstuffs. "The viscosity of the acid thinned hydroxypropylated tapioca starch is low even at reasonably high concentration" (col. 3). "The viscosity of gum arabic and HP tapioca starch is the same. Thus under actual use conditions gum arabic can be replaced by thinned hydroxypropylated tapioca starch."

At columns 3-4, Gonze et al. states that

it was found that the thinned hydroxypropylated tapioca starch mimics the functional properties of gum arabic, matching its key attributes i.e. film clarity, neutral taste, flexible texture and solubility. However, the mentioned starch has also some advantages in the ease of handling, constant availability and higher solubility. Moreover, the coating composition may only contain water and thinned hydroxypropylated tapioca starch, no other ingredients being required.

Thus it would have been obvious for one of ordinary skill in the art to have utilized the acid thinned hydroxypropylated (HP) tapioca starch of Gonze et al. as a substitute for the gum arabic component of either Meer et al. or Sander. Both Meer et al. and Sander disclose powdered compositions containing, at least, psyllium and gum arabic. Gonze et al. states that many of the functional properties of acid thinned hydroxypropylated tapioca starch within food compositions were the same as that of gum arabic, and in some cases, more advantageous. Further, gum arabic can act to coat the psyllium in powder form, prior to addition to an aqueous liquid, as disclosed by the Sander reference.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keith Hendricks whose telephone number is (571) 272-1401. The examiner can normally be reached on M-F (8:30am-6pm); First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



KEITH HENDRICKS
PRIMARY EXAMINER